

## Russian Genocide in Ukraine as an Attempt to Destroy the Ukrainian Nation

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**Keywords:** genocide, nation, international crimes, national group, “natiocide”

**Abstract:** The article assesses the recent and ongoing criminal acts of the Russian Federation in terms of their compliance with existing international crimes, in particular with the crime of genocide, with the aim of correct criminal-law qualification. It provides an analysis of *actus reus* of genocide as an international crime under the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter: Convention). The illegal action of the Russian Federation is analysed in the context of the so-called “denazification,” as the main goal of the full-scale aggression of Ukraine. The author attempts to show the distinction between the groups protected by the aforementioned Convention and the term “Nation,” which seems to have much broader sense. The author also concludes that the *actus reus* of the Russian perpetrators is not aimed solely at the destruction of any of the groups of the Convention, but actually at the destruction of the Ukrainian nation, its culture, language, history and statehood. In this context, the views of Raphael Lemkin, the founder of the concept of genocide as an international crime, are analysed. The necessity of international legal qualification of the actions of the Russian Federation as a new international crime has been substantiated and its conditional name – “natiocide” is proposed.

As we know, on February 24, 2022, the Russian Federation launched an open aggression against Ukraine. The main purpose of this so-called “special military operation,” as to the Russian authorities, is the “denazification” of Ukraine.

Needless to say, the world was shocked by the atrocities committed by the Russians. I will not go deep into current situation concerning Russian aggression – you all know it perfectly. Just to mention – to date, the Office of the Attorney General is investigating tens of thousands of crimes committed by Russian invaders. Taking into account all atrocities, committed by the Russian troops in Ukraine, the Ukrainian Parliament adopted the Resolution on the Russian Federation’s Genocide in Ukraine on 14 April 2022.<sup>1</sup>

The parliaments of Latvia, Estonia, Canada, Lithuania, Poland, the Czech Republic, and Ireland have already supported Ukraine and have adopted similar resolutions. Recently, the Parliamentary Assembly of NATO States has also adopted a resolution which mentions possible genocide in Ukraine.

The Joint Investigation Team along with Prosecutor’s office of the ICC have issued a statement concerning Ukraine that they would focus not only on war crimes but also on the crime of genocide. The world community is beginning to understand that one of the most brutal and serious international crimes of genocide has been committed in Ukraine. However, the question is whether it is the crime of genocide, as we commonly understand it, or the Russians have been committing something much worse, something that goes beyond the existing meaning of genocide, as presented by the Convention.

The provisions of Article 2 of the Convention, define genocide as an act committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, including the killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group and forcibly transferring children of the

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<sup>1</sup> Resolution of the Verkhovna Rada of Ukraine of 14 April 2022 “On the Statement of the Verkhovna Rada of Ukraine “On the Russian Federation’s Commitment of Genocide in Ukraine,” No. 2188-IX, accessed June 16, 2023, <https://zakon.rada.gov.ua/laws/show/2188-20#>.

group to another group.<sup>2</sup> The concept of genocide is interpreted similarly in the Rome Statute.<sup>3</sup>

It is believed that the *actus reus* (objective side) of genocide is mostly formed by actions aimed at the physical extermination of members of a certain national (ethnic, racial) group. And only actions for the forcible transfer of children from one group to another do not involve direct *de facto* extermination but have the same goal with a view to the future. The object of genocide is the security (safety) of existence of a certain protected group.

Therefore, genocide, according to the Convention and the ICC Statute, is first and foremost the physical destruction of members of a particular group, both within and outside the territorial boundaries of the country of residence of such a group. This means that today the killing of Ukrainians by Russians in Ukraine is quite naturally interpreted by the world as genocide.

However, if we assume that the Russians, even without carrying out an aggressive war in Ukraine, would kill the Ukrainians in Russia for reasons of their nationality, this could also be interpreted as genocide of Ukrainians. As both – the first and the second case involve the destruction of a certain protected group.

At the same time, publicly available facts and official information, as well as the events of recent months, show that the military and political leadership of the Russian Federation commits a number of other socially dangerous acts in Ukraine that do not quite correspond to the features of international crimes, known to modern international law. These are primarily acts related to the so-called “denazification,” as one of the reasons for the aggression. A number of such acts are extremely cruel and publicly dangerous, as they threaten the existing world order and therefore require a more detailed analysis for their international legal assessment.

In fact, the criminal acts committed by the Russian military forces in Ukraine in many respects correspond to the crime of genocide. However, the purpose of their commission, the intent of Russian leaders, their *mens*

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<sup>2</sup> The General Assembly of the United Nations, Convention on the Prevention and Punishment of the Crime of Genocide, Paris, 12 January 1951.

<sup>3</sup> The United Nations Diplomatic Conference, Rome Statute of the International Criminal Court, Rome, 17 July 1998.

*rea*, as well as a range of socially dangerous actions, and thus the *actus reus* as a component of this international crime, will differ significantly from a similar component of genocide.

Having analyzed Putin speeches during his addresses to the Russian people of 21 February 2022 and 24 February 2022, prior to the aggression, we reveal that, as it turned out, there is “[...] no such state as Ukraine and no such nation as the Ukrainian nation. They do not exist historically. Ukraine is an artificial state without its own history and territory created by communists. Therefore, it (Ukraine) needs to be “decommunized.”<sup>4</sup> What it obviously means – is to be eliminated.

In addition, an article titled “Russia’s Offensive and Coming of a New World” in the Russian state-owned media, RIA Novosti, which was scheduled to be published three days after the beginning of the active phase of armed aggression (just on the date of the referendum results in Belarus), states that “[...] Russia is rebuilding its unity, destroyed after 1991, [...] bringing the Russian people together again, and Ukraine will no longer exist [...]”<sup>5</sup> Thus, the purpose of the “special military operation” is very clear: Ukraine must be destroyed.

Here, we can also mention the statement of the Deputy Chairman of the Security Council of the Russian Federation, Medvedev, of 5 April 2022, or official statements of well-known pro-government political scientists, such as Sergeytsev, calling for the destruction of Ukrainian nation.<sup>6</sup>

Such erroneous declarations of Russian leaders still continue, showing the similar pattern of conduct. A few months ago, abovementioned Medvedev stated that “after the war Ukraine will no longer exist on the planet

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<sup>4</sup> “Message from the President of the Russian Federation,” February 24, 2022, Pupia News, accessed June 16, 2023, <https://youtu.be/taYTXHsUU5w>; Message from the President of the Russian Federation (21.02.22), accessed: 16 June 2023, <http://kremlin.ru/events/president/news/67828/videos>

<sup>5</sup> Петр Акопов, “The Offensive of Russia and the New World,” February 26, 2022, accessed June 16, 2023, <https://web.archive.org/web/20220226051154/https://ria.ru/20220226/rossiya-1775162336.html>.

<sup>6</sup> “RIA News,” April 5, 2022, accessed June 16, 2023, [https://t.me/rian\\_ru/157214?fbclid=IwAR23-OAfd2vrMwdf5h-3Ma8Y7YJGt9zEnUBenWjUxTI90W\\_wIxCFerByNcc\\$](https://t.me/rian_ru/157214?fbclid=IwAR23-OAfd2vrMwdf5h-3Ma8Y7YJGt9zEnUBenWjUxTI90W_wIxCFerByNcc$); <https://ria.ru/20220403/ukraina-1781469605.html>.

Earth because this is historically Russia.”<sup>7</sup> And a few weeks ago, Putin, during its official meeting with the head of Constitutional Court of Russia, stated that “Ukraine has never existed in the history of world civilization.”

The elimination of the Ukrainian nation and even any single mention of it. This is the primary goal of Russia. The denial of the existence of Ukraine is the Russian state ideology. We are also witnessing multiply actions following this goal. I mean mass destruction of Ukrainian historical and fiction literature being performed by the so-called “ideological units” of the Russian military police.<sup>8</sup> The Ukrainians in the temporarily occupied territories are forbidden to study in schools in the Ukrainian language.

Additionally, we may mention the decision of the Russian Ministry of Education that Ukrainian textbooks “distort” true history, or the actions of the Investigative Committee of the Russian Federation to initiate a criminal case on the “falsity” of Ukrainian history.<sup>9</sup> All of these and other facts certainly complement the *actus reus* of a crime being committed, as they are attempting to erase and rewrite the official history of a separate nation.

It is especially worth emphasizing that abovementioned acts are committed by Russians with an intent to implement a separate plan and are manifestation of the policy of the Russian state, which is officially called “denazification” by their authorities. It is evident that such a policy of “denazification” in fact is just a disguise and has nothing to deal with its historical meaning.<sup>10</sup>

It is not hard to note that abovementioned actions, although not aimed at the direct physical extermination of Ukrainians, as is typical for the crime of genocide, still pose a significant public danger. They are a threat to the existence of the whole nation as one of the members of world civilization.

<sup>7</sup> Михаил Добрунов, “Медведев заявил, что Украины «не будет на планете»,” April 8, 2022, accessed June 16, 2023, <https://amp.rbc.ru/rbcnews/politics/08/04/2023/6431074a9a7947826128c423>.

<sup>8</sup> “The Occupiers Are Destroying Ukrainian Literature and History Textbooks in the Occupied Territories, Gur of the Ukraine’s Ministry of Defense,” March 24, 2022, accessed June 16, 2023, <https://m.day.kyiv.ua/uk/news/240322-okupanty-znyshchuyut-ukrayinsku-literaturu-ta-pidruchnyky-istoriyi-na-okupovanyh>.

<sup>9</sup> “Sledkom,” March 30, 2022, accessed June 16, 2023, [https://t.me/sledcom\\_press/977](https://t.me/sledcom_press/977).

<sup>10</sup> “Denazification,” Wikipedia, accessed June 16, 2023, <https://en.wikipedia.org/wiki/Denazification>.

A nation not in a political sense as a group of people bound together by common citizenship, but a “nation,” or “people,” as a community of individuals who share a common and unique name, language, religion, culture, history, traditions, folklore and historical motherland. Thus, through all manifestations of Russian policy, it aims, in fact, to destroy the Ukrainian nation. Consequently, the Russian “denazification,” *de facto*, is nothing but a deliberate, conscious, and premeditated attempt to destruct another nation. They are aimed at destroying the unique history of the nation, its appropriation, and at the destruction and appropriation of other nation cultural heritage, folklore, as well as the destruction of language as a unique identifier of the nation. They are aimed at the denial of the other nation’s identity, the deprivation of its own historical territory and a statehood as a result of exercising of such a nation the right to self-determination.

There is no official legal definition of a term “nation” or “people” as a community of individuals in international law. As there is no unique Conventional definition of any group protected from genocide either.

It should be noted that since the signing of the Convention, the question of defining the concept of a “protected group” has remained open for dozens of years. But it did not constitute any serious problem for international law due to the fact that the Convention itself was not practically applied. Only in 1998, considering its first case on the crime of genocide, the International Criminal Tribunal for Rwanda (hereinafter: ICTR) published its judgement in the *Akayesu* case, in which the definition of the concept of “national group” was proposed. In this judgment, the concept of “national group” was defined as “a collection of people who are perceived to share a legal bond based on common citizenship coupled with reciprocity of rights and duties.”<sup>11</sup>

By providing the above definition, the ICTR equated the concept of nationality with the concept of citizenship. Thus, according to the court’s conclusion, the composition of the national group includes not representatives of one nationality, but citizens of one state, regardless of their national origin. And therefore, through the prism of such a definition, in the Ukrainian

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<sup>11</sup> International Criminal Tribunal for Rwanda, Judgement of 2 September 1998, *The Prosecutor v. Jean-Paul Akayesu* (Trial Judgement), Case ICTR-96-4-T.

legal sense, the representatives of the “national group” are the Ukrainian people who are the citizens of Ukraine of all nationalities.

Regarding the definition of other protected groups in the case of genocide, the ICTR in the abovementioned *Akayesu* case considered a group of people, whose members share a common language and culture to be an “ethnic group,” and a community of people who practice the same religion, values or cult as a “religious group.”<sup>12</sup> The ICTR determination of a “racial group” is based on inherited physical traits that are often specific to a particular geographic region, regardless of language, culture, nationality, or religion.

All of these definitions of the protected groups were made by the ICTR during its first case prosecuting *Akayesu* for genocide, and they were based on the so-called objective criteria or approach to their formation. Therefore, such a group is considered as a social fact, as a stable and permanent reality. Individuals become members of such a group automatically and irrevocably through being born into the group.

However, there is also a subjective approach to the formation of such groups, according to which a group exists to the extent that its members perceive themselves as belonging to such a group (self-identification), or as such are perceived by the perpetrators of genocide (identification by others). Moreover, a mixed approach (a combination of these two options) can be applied.

Finally, already in the following year after the *Akayesu* judgement, when considering other cases (e.g. the cases of *Rutaganda*, *Kaishema and Ruzindana*), the ICTR emphasized that “the concepts of national, ethnic, racial and religious groups have been the subject of many studies, but at the time of considering the cases, the only accepted and internationally recognized there is no definition. Therefore, each of these concepts must be evaluated with regard to specific political, social or cultural circumstances.”<sup>13</sup> Moreover, the court summarised that a person’s belonging to a certain group is a subjective rather than an objective concept.

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<sup>12</sup> Ibid.

<sup>13</sup> International Criminal Tribunal for Rwanda, Judgement of 6 December 1999, *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda* (Judgement and Sentence), Case ICTR-96-3-T.

It is important that the perpetrator of genocide perceives the victim as belonging to the group targeted for extermination. In some cases, the victim may perceive himself as belonging to a certain group<sup>14</sup>.

Frankly speaking, different approaches in the cases of International Tribunals on Rwanda and Former Yugoslavia to the criteria of defining a national, ethnic, religious or racial group and the criteria for belonging to it do not prevent us from the following conclusion – the concept of a protected group in the Convention and the concept of the term “nation” are distinct and different from each other. Moreover, the nation is actually a certain kind of aggregate of all or several groups that are protected by the Convention.

Contrary to the definitions of the protected groups the word “nation” in its broad meaning has a much wider sense. That means that the object of the encroachment in the crime Russians commit in Ukraine is different from the object of the crime of Conventional genocide.

In view of such a conclusion, we can propose the concept of international legal responsibility, which is based on the destruction, elimination, even erasing of the entire nation. And the criminal acts of the Russian aggressors, which they are committing today, can serve as an example and as the vital necessity to do so. But, for greater persuasiveness of this approach to the assessment of the relevant crime and its difference from the crime of genocide, let us turn to the origins of the theory of genocide.

The “destruction of the nation” – this is what genocide primarily meant for its founder, Rafael Lemkin.

Genocide, according to Lemkin was not necessarily a mass killing of the members of the nation but a “plan of different actions aiming at the destruction of essential foundations of the life of such nation,” as Lemkin wrote in his fundamental work “Axis Rule in Occupied Europe” in 1944<sup>15</sup>.

Lemkin distinguished a much wider list of actions by which genocide could be committed than those that today constitute the *actus reus* of this crime, according to the Convention. Moreover, the result of genocide

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<sup>14</sup> International Criminal Tribunal for Rwanda, Judgement of 21 May 1999, The Prosecutor v. Clément Kayishema and Obed Ruzindana (Trial Judgement), Case ICTR-95-1-T.

<sup>15</sup> Raphaël Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (New York: Columbia University Press, 1944).



should not necessarily lead to the physical destruction of a nation, except through the mass murder of its representatives, he believed. According to him, genocide could be committed as a result of coordinated actions aimed at destroying the vital foundations of the existence of national groups with the aim of eliminating them as such. The plan must aim at the disintegration of political and social institutions, culture, language, national feelings, religion and economy, as well as at the destruction of the personal security, freedom, health, dignity, even life of the members of such a national group.<sup>16</sup> Genocide is aimed against the national community as a whole, and the actions through which it is committed are directed at members of such a community.

Moreover, in his research, the author uses both of the terms – a “nation” and a “national group,” as synonyms, filling them with the same meaning. Taking into account the historical period in which Lemkin lived, it is quite natural that along with the nation, he also singles out an “ethnic group” as a victim of genocide. We can obviously assume that in this way he divides the nations that already used their right to self-determination through the acquisition of statehood, thus becoming a nation in political sense, and the nations that, as national minorities, are still part of other states and do not have political independence so far, being *de facto* “ethnic groups.” For example, Jews, Gypsies or ethnic minorities of the Soviet Union (e.g. Ukrainians). This point of view is also approved by Lemkin’s speech he gave in New-York, in 1953. The speech was dedicated to the 20<sup>th</sup> anniversary of Grate Famine of Ukrainians. “What I want to speak about is perhaps the classic example of Soviet genocide, its longest and broadest experiment in Russification – the destruction of the Ukrainian nation” – these were the first word of his speech.<sup>17</sup>

The Lemkin’s vision of genocide, as a plan for the collective implementation of all the actions determined for its execution, suggests that he primarily considered genocide precisely as a crime against the entire nation, and not against individual groups specified later in the Convention according to separate criteria. This can be confirmed by the Lemkin’s use

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<sup>16</sup> Ibid.

<sup>17</sup> Raphael Lemkin, *Soviet Genocide in Ukraine. Article in 28 Language* (Kyiv: Maisternia Knyhy, 2009).

of the term “national formation” when characterizing genocide. Showing, in particular, that in genocide, the actions that are committed against individuals are not directed against them personally, but against the entire nation. He argued that the confiscation of property in the occupied territory from those who left it can be recognized simply as a crime against private property, on the other hand, the forced deprivation of property of people just because they are Poles, Jews or Czechs objectively leads to the weakening of their national formations.

Another proof of Lemkin’s perception of genocide, precisely as a crime against the nation, is his understanding of the so-called stages of genocide. During the first stage, the national pattern of the oppressed nation is destroyed, and only later, during the second stage, the national pattern of the oppressor is imposed. Thus, as a result of genocide, there is a kind of replacement of all the attributes (features) of one nation with the attributes of another nation. In order to describe the destruction of national pattern he used the specific word “denationalization” (Does this not sound familiar to what Russians are doing in Ukraine now, but they call it “denazification”?).

What is important, Lemkin allowed for the replacement of such national models both when the oppressed population or part of it was left behind, and when the territory was completely emptied of its previous population. This position of Lemkin once again confirms that the main issue in genocide is the destruction of the foundations of the nation, its identifying features, and not only the physical destruction of its representatives (national or ethnic groups). He also provided many examples of how genocide, being a coordinated plan of the fascists, manifested itself in the political, social, cultural, linguistic and economic spheres.

Showing the horror of genocide, R. Lemkin comes to the conclusion that it is necessary to provide nations, which he considers an important element of the world community, with an international legal protection against this crime. The world exists with such great cultural and intellectual diversity precisely because of the nations that inhabit it. The importance of a nation’s existence consists in its original contribution to the global cooperation, based on a unique culture and traditions. And, therefore, the destruction of a nation will lead to the loss of its future contribution to the world civilization.

Unfortunately, the further meaning of genocide was substantially narrowed from its original meaning during the drafting of Genocide Convention in 1948.<sup>18</sup> Thus, it placed the crime of destruction of the nations beyond the scope of international protection.

Needless to say, all the actions Russians are committing, are dangerous from the point of view of international law, as they encroach on the peaceful coexistence of states, nations and the world order. Therefore, there is a need for their further recording and evaluation so that they could be properly assessed. So, it seems there is a strong need to distinguish a more aggravated and more dangerous crime in modern international law, along with the already known genocide, which could be called, for instance, “natiocide” – the destruction of a nation. It is composed of two words – a “nation” and the Latin suffix “ceado” (killing). Such criminalization would not only help to condemn Russian authorities worldwide for the acts they are committing in Ukraine, but it also might help the world community to prevent such atrocious crimes in the future, as well as protect nations as members of the world civilization and bearers of unique historical, cultural, territorial and linguistic heritage.

The time has come to update our understanding of the crime of genocide. In other words, it is time to legitimise or restore its original meaning.

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